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Supreme Court, U.S.
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No. OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

Yuri Kraytsberg, Pro Se and

Yuri Kraytsberg, as Next Friend of Anna Kraytsberg,

Minor - Petitioners

vs.

Commonwealth of Massachusetts - Respondent

ON PETITION FOR WRIT OF SERTIORARY TO

MASSACHUSETTS APEALS COURT

PETITION FOR WRIT OF CERTIORARI

Yuri Kraytsberg
42 Madison Ave.
Sharon, MA 02067
(617) 784-8353

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34 pp

QUESTIONS PRESENTED

Question 1. Whether the state court can indefinitely suspend all contact between parent and child without finding of parental unfitness for the purpose of collecting the child attorney's fee.

Question 2. Whether the state court abused it's contempt power by jailing the petitioner for failing to pay a total amount of fee for the attorney for the minor child which was beyond his ability, rather then accepting a reasonable payment plan based on his financial statement.

LIST OF PARTIES

A list of parties to the proceedings in the court whose judger the subject of this petition is as follows:

Commonwealth of Massachusetts

Yevgenya Kraytsberg

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari issue to review the judgements below.

OPINIONS BELOW

The opinion of Massachusetts Appeals Court to review the merits appears at Appendix A to the petition. The order of Massachusetts Appeals Court is reported at 40 Mass.App.Ct. 1118. Memorandum and order pursuant to Rule 1:28 is unpublished.

The judgments and order of the Massachusetts Middlesex Probate and Family Court appear at Appendixes B, C, D, E and F to the petition and are unpublished.

JURISDICTION

Petitioner's Application for Further Appellate Review was denied by Massachusetts Supreme Judicial Court on July 9, 1996. A copy of that decision appears at Appendix G.

An extension of time to file the petition for a writ of certiorari was granted to and including December 6, 1996 on October 7, 1996 in Application No. A-250. Petition initially was filed on December 6, 1996 and returned by the Clerk along with a letter indicating not compliance with Rules of the Supreme Court of the United States.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Amendment XIV provides, in relevant part, that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; no deny to any person within its jurisdiction the equal protection of the laws."

Federal Rule of Civil Procedure 17(c) provides, in relevant part, that infant "may sue by next friend or by a guardian ad litem."

STATEMENT

Complaint for modification of divorce judgement alleged that non-custodial father (the petitioner) had plans to kidnap minor child. Complaint asked for termination of all visitation. On temporary order probate and family court judge suspended all visitation and ordered petitioner to pay forthwith $1,586.00 in attorneys fees for the court appointed attorney for the minor child. Father failed to pay as ordered, was found in contempt for not paying $3,700.00 and sentenced for 30 days, suspended for one day. After he filed notice of appeal of judgement of contempt it was modified to amount of $1,286.00. Mr. Kraytsberg was send to jail and released after he filed a habeas corpus petition in the U.S. District Court.

On the complaint for modification no findings were made of attempted kidnapping or father's parental unfitness. Mr. Kraytsberg was ordered to pay additional $4,038.10 to the attorney for minor child. All visitation and contact between petitioner and his child were indefinitely suspended - until "defendant makes reasonable provisions for the payment or prepayment for the services to be rendered by the attorney for the child" (see page 4a). Attorney for the minor child was given unlimited authority to restore contact between petitioner and his daughter in a way she wishes.

Petitioners appeal was summarily disposed by the Appeals Court - after he was allowed additional time to file his response brief and before such time expired or the brief filed.

I. Proceedings in the Lower Court

1. On February 16, 1993, shortly after two day trial, a Judgement of Divorce Nisi was entered by Massachusetts Middlesex Probate and Family Court, Judge Ginsburg, in the case No. 91D-1093-D1, Kraytsberg v. Kraytsberg. By the time of trial the only minor child of parties, 5 years old Anna was represented by a Guardian at Litem (appointed by Judge Leihy on November 4, 1991) and an Attorney for minor child Joan Kolligian, former Judge Ginsburg's secretary and former employee of Office of the Clerk of Massachusetts Supreme Judicial Court (appointed on January 13, 1993 by Judge Ginsburg). As part of this judgement Ms. Kraytsberg was awarded custody of the minor child, Yuri Kraytsberg was given

liberal visitation rights (every other weekend plus one weekday overnight visitation every other week; one week visitations during school holidays also were granted). Judge Ginsburg further ordered that he would retain jurisdiction over the case.

In this judgment, with no request from any party, Mr. Kraytsberg was ordered to pay $4,000 in attorney's fees to Ruth Budd, esq., Yevgenya's *pro bono* attorney. Mr. Kraytsberg was also ordered to pay an unspecified balance of attorney's fees to Joan Kolligian, esq. - Attorney for the minor child. After the defendant failed to pay those fees complaints for contempt were filed. On June 9, 1993 Judge Ginsburg denied Husband's Motion to Recuse Judge Ginsburg (Pro Se), and after a non-evidentiary hearing adjudged him in contempt. Mr. Kraytsberg spent 8 days out of 30 days sentence in jail until relatives collected money to get him released.

2. On January 22, 1994 Mr. Kraytsberg received by mail his former wife's "Motion to Terminate All Visitation" dated January 21, 1994. At the hearing on January 26, 1994 recognizing there was no underlying complaint, Judge Ginsburg advised the attorney for the plaintiff to file a "complaint for modification". At this hearing, the plaintiff's counsel modified the heading on her motion to read "complaint for modification" which the court accepted. The complaint was never served on the defendant.

After hearing a Temporary Order was issued suspending all visitation and replacing them by supervised visitation according to the scheduler submitted by the Attorney for the minor child Joan Kolligian. Parties were ordered to appear in court on February 23, 1994. No findings of fact were issued.

3. On February 23, 1994 Ex-parte Motion for Payment of Attorney's Fees was filed by Attorney Kolligian. No itemized statement signed under penalties of perjury[1] was filed in support of

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[1]Massachusetts Rule 1:07 of Rules of Supreme Judicial Court provides in relevant part that an appointment by the court of counsel in any civil matter should be recorded in the appointment docket and that

"(3) No payment shall be made or received ... until a statement under the penalties of perjury, certifying the services provided, amount of payment, and itemization of expenses, is filed with the clerk or register, to be placed with the papers

this motion. On the same date, after a non-evidentiary hearing, a Temporary Order was entered by Ginsburg, J. (Appendix F).

All visitation between father and daughter were terminated.

The court also ordered the defendant to pay one thousand five hundred and eighty-six ($1,586.00) dollars to Ms. Kolligian, Attorney for the minor child. Judge Ginsburg did not allow argument on the attorney's fee. No findings of fact were issued.

On March 22, 1994 Notice of Appeal was filed by the defendant and a Complaint for Contempt was filed by the Attorney for the minor child.

4. On April 8, 1994 a Motion to Continue the trial on Complaint for Modification was filed by Attorney for Minor Child and allowed by the court. Matter was continued for July 19, 1994.

Although no motion to continue trial on complaint for contempt was filed, and no notice of such continuation was served upon the defendant (who erroneously concluded that Attorney Kolligian was satisfied by installment payments he started to make and dropped her complaint), it was put on list for hearing on July 19, 1994. Defendant learned about it on or about July 18, 1994, upon examining the docket.

5. On July 19, 1994 the defendant filed his appearance pro se and his response to the Complaint for Contempt. On this same date, before the trial on the Complaint for Modification started, Attorney Kolligian confirmed in conversation with the defendant that she would not proceed with Complaint for Contempt, and that she was going to put on hearing Motion to Compel Payments of Attorneys Fees instead. Later that day such motion was filed with the court. No affidavit or itemized statement of expenses and time spent on the case was attached.

6. At the hearing on the complaint for contempt on July 19, 1994, the defendant presented his financial statement and requested that he be allowed to continue making installment payments, because he did not have financial ability to pay a lump sum "forthwith".

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in the case."

In the case at bar appointment of Attorney Kolligian has never been reported.

Judge Ginsburg denied this request. After about 3 min. of non-evidentiary discussion the defendant was found in contempt for not paying "the fees of the attorney for the child the arrearage of which is fixed at $3,700" (Appendix C), which more then doubled her original billing of $1,586 at rate of $200.00 per hour. The Judge did not issue any findings of fact. Sentence was suspended until July 21, 1994.

On July 20, 1994 Notice of Appeal on the Contempt Judgement was filed with the lower court, along with Emergency Ex-Parte Motion for Stay of Execution. Motion was heard by Judge Highgas, who declined to act on it. On the same date the defendant filed a Motion for Stay of Execution of the Contempt Judgement with the Appeals Court. On July 21, 1994 it was denied without hearing by Judge Greenberg.

On July 21, 1994 an ex-parte Motion to Amend Judgement of Contempt was filed by the Attorney for the minor child along with an "Affidavit of Attorney for Minor Child in Support of Motion to Compel Payment of Fees". The court (Ginsburg, J) issued a new "Judgement of Contempt" and a "Memorandum and Order on Complaint for Contempt" (Appendix D). The defendant was sent to Middlesex County Jail in Cambridge for 30 days. On July 22, 1994 Yuri Kraytsberg filed a Motion for Stay of Execution with Massachusetts Supreme Judicial Court, which was denied on the same date without hearing by Judge O'Connor.

On July 25, 1994 a Petition under 28 U.S.C. 2254 for Writ of Habeas Corpus was filed. On the same date hearing was ordered by Chief Judge of United States District Court Joseph L. Tauro to be held on July 27, 1994. On July 27, 1994 Chief Judge Tauro appointed an attorney to represent Mr. Kraytsberg on the hearing, stating in the open court his concern for the sate court's misuse of it's contempt power (see page 17a):

"... I am dealing with a discreet constitutional issue, and I want it to be handled properly. And I regard it as serious matter."

On the same date, without hearing or record request from any party, Judge Ginsburg issued a new judgement (Appendix E) which allowed

the defendant to make installment payments as he was doing before the incarceration. By the end of the day Mr. Kraytsberg was released from jail.

7. After a one day trial on July 19, 1994 a Modification Judgement and Findings of Fact (Appendix B) were issued on July 25, 1994. On August 10, 1994 a Notice of Appeal on the Modification Judgement was filed.

8. On August 3, 1994, after Mr. Kraytsberg's incarceration and release from jail, all contempt judgements and modification judgement were entered on the docket and became effective[2].

9. On August 20, 1994 Mr. Kraytsberg received a letter from attorney Kolligian ("bill for legal services"). With no additional time spent, her bill now demanded $8,962.00.

10. On December 7, 1994 a "Motion for an Evidentiary Hearing on the Attorney's Fees and Performance of the Attorney for Minor Child" was filed by Mr. Kraytsberg, who alleged fraud on part of Attorney Kolligian. Judge Ginsburg denied the motion. As such, no hearing on merits took place.

II. Proceedings in Appellate Courts

On April 18, 1995 Mr. Kraytsberg's appeal was entered on the docket of Massachusetts Appeals Court (Appeals Court No. AC-95-P-679). On June 19, 1995 Mr. Kraytsberg timely filed his brief, which raised a number of constitutional issues.

Responses were filed on January 3, 1996 by his ex-wife's attorney and the Attorney for the minor child, which failed to argue the specific issues presented by Mr. Kraytsberg and substituted them with issues of their own. The Appeals Court erroneously took these "substitutes" as the only issues presented on the appeal. To show that federal questions were timely and properly raised and that this Court has jurisdiction to review the judgement on a writ of certiorari, the list of issues presented by the petitioner to Massachusetts Appeals Court is enclosed (see pages 13a - 15a).

On January 22, 1996 Mr. Kraytsberg filed a Motion to

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[2]See footnote 3, infra

Correct the Record along with a Memorandum, asking the Appeals Court to correct clerical errors made in the docket sheets in lower court or to grant him leave to petition the lower court for the same relief. Said motion was denied on the same date "without prejudice to refiling the within <motion> with the lower court".

On February 2, 1996 Ms. Kraytsberg filed a Motion for Summary Disposition, which was "referred to the panel that will be designated to decide the appeal".

On January 22, 1996, February 20, 1996, March 19, 1996 and April 22, 1996 the appellant filed motions for extension of time to file his reply brief, giving as a reason continuing litigation over correction of the docket entries. All motions were allowed by the court, making the last date for filing of father's reply brief May 29, 1996.

On April 30, 1996 the Appeals Court issued a rescript, affirming modification judgement of July 25, 1994, and the contempt judgements of July 19 and 21, 1994 and accompanied by Memorandum and Order Pursuant to Rule 1:28 (see pages 1a -3a). No ruling was made on the appeal of Temporary Order issued by the lower court on February 23, 1994.

On June 18, 1996 an application for further appellate review was filed by Mr. Kraytsberg with Supreme Judicial Court (docket No. FAR-08568). On or about August 7, 1996 the petitioner was notified that this application was denied on July 9, 1996 (see page 12a).

REASONS FOR GRANTING THE PETITION

1. State Court Rulings are in Conflict with Decisions of the Supreme Court.

Judgement of civil contempt and incarceration of petitioner for his inability to pay, along with termination of father/daughter relationship as a tool of collection of judge's former secretary legal fee call for exercise of this Court's supervision power. Such exercise is further justified by state courts departure from the accepted and

usual course of judicial proceedings. Lack of evidence - and findings - to support termination of parent/child relationship put this case in one row with Thompson v. City of Louisville, 362 U.S. 199, 80 S.Ct. 624 (1960) where petition for writ of certiorari was granted on grounds of Fourteenth Amendment: Right of Due Process.

Lack of evidence is not the only violation of due process in the case at bar.

Petitioner was incarcerated on July 21, 1994 on civil contempt with no order in full force and effect to justify it. Although the order of incarceration was issued on July 21, 1994, it was entered on the docket on August 3, 1994. Given the clear language of Rule 58(a) of Massachusetts Rules of Domestic Relations Procedure[3] and the fact that on July 27, 1994 the petitioner was already released, there was no legal justification to keep him in jail at all.

The judgement of contempt of July 21, 1994 was issued without jurisdiction. First contempt judgement was issued on June 19, 1994. Given that on July 20, 1994 the petitioner filed his notice of appeal and motion for stay with Massachusetts Appeals Court, the contempt judgement of June 19, 1994 could not be modified by the lower court - the jurisdiction was at the Appeals Court.

Violations of due process are not limited to the state lower court. Massachusetts Appeals Court acted without jurisdiction when summarily disposed petitioner's appeal - after appellant was allowed additional time to file his response brief but before such time expired or brief filed.

Actions of the state court on the contempt are far cry from the standard set by this Court in International Union, UMWA v. Bagwell, 114 S.Ct. 2552 (1994). Judge Ginsburg, apparently understanding the questionable nature of his actions, and anticipating the federal court's response changed his judgement seven days into the 30 day sentence for contempt and allowed Mr. Kraytsberg to make installment payments.

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[3]Rule 58. Entry of Judgement. "... A judgement is effective only when ... entered as provided in Rule 79(a)" (Rule 79 (a) provides how entries on the civil docket should be made)

Simultaneously, Judge Ginsburg issued a new judgement to terminate Mr. Kraytsberg's visitation with his seven years old daughter, Anna. One cannot rule out raising the question of vindictiveness in this case, especially given degree of personal emotional involvement of Judge Ginsburg in the matter:

> "His <Mr. Kraytsberg's> offer to meet the obligation in this case by paying one hundred ($100.00) dollars per month is an affront to the court" (see page 9a).

It is now more than three years since father and daughter have been together. There has never been any allegations made or evidence presented that would suggest that Mr. Kraytsberg was an unfit parent yet he and his child are being punished with a denial of their fundamental right of parental society. A clear conflict with this Court's ruling in Santosky v. Kramer, 455 U.S. 745, 102 S.Ct., 1388 (1982).

As this Honorable Court has continuously attempted to define civil and criminal contempt and to deter it's misuse, the case at bar represents a dangerous "end run" on the constraints this Court has made. Crushing the parent/child bond is not in the best interest of Anna or her father. It shocks the conscience to think that denial of parental rights has become the lawyers tool for bill collecting. The Magna Charta (1215) spoke of the administration of justice with "a heavy hand or an evil eye". This same phrase appears throughout American jurisprudence. It is a phrase which best describes this case and demands the attention of our Highest Court.

2. The Questions Presented are Important.

Importance of constitutional questions presented in this case is certified by Massachusetts Commission on Judicial Conduct:

> "Your complaint was thoroughly investigated by reviewing the court reporter' s tapes and transcripts of the court proceedings at issue, as well as the hundreds of pages of documents you provided, and by interviewing you and many other individuals. Ultimately the Commission determined that the important issues you raised have been or will be reviewed by an appellate court." (see page 18a).

Same was stressed in the open court by Chief Judge Joseph Tauro

(see page 5, supra). Petitioners hope this Honorable Court will share his concern:

> "...There is no such thing as debtor's prison. Not supposed to be. If he does not have the money. You know, I am troubled by it on this record..." (page 16a)

CONCLUSION

The petition for a writ of certiorari should be granted.

Date: January 31, 1997

Respectfully submitted,

Yuri Kraytsberg, Pro Se
42 Madison Ave,
Sharon, MA 02067
(617) 784-8353

APPENDIXES

Commonwealth of Massachusetts

Appeals Court for the Commonwealth

At Boston,

In the case no. 95-P-679

YERGENYA KRAYTSBERG

VS.

YURY KRAYTSBERG.

pending in the Superior Court for the County of Middlesex

Ordered, that the following entry be made in the docket:

The modification judgment of July 25, 1994, and the contempt judgments of July 19 and 21, 1994, are affirmed.

By the Court,

Ashley Ahearn,
Asst. Clerk.

Date April 30, 1996

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

95-P-679

YERGENYA KRAYTSBERG

VS.

YURY KRAYTSBERG.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Based upon our consideration of the briefs and record appendix filed by the parties, we affirm the modification judgment dated July 25, 1994, for substantially the reasons set forth in the wife's brief and we affirm the contempt judgments dated July 19, 1994, and July 21, 1994, for substantially the reasons set forth in the brief of the attorney for the child.

We conclude that the judge's determination that a material change of circumstances has occurred warranting a change in the husband's visitation rights with his child was supported by the judge's subsidiary findings which were not clearly erroneous and for which there was ample evidentiary support in the record.

We also conclude that the husband has not demonstrated that the judge abused his discretion in failing to recuse himself. Nor has the husband demonstrated any untoward action by the judge.

For the reasons noted in both the wife's brief and the brief of the attorney for the child, the judge has the power to appoint an attorney for the child and to order the payment of attorney fees by the parties.

We find no merit in the husband's claims that his rights were abused in the judge's conduct of the contempt proceedings. We also note that the appeal relative to the contempt proceedings may not properly be before us because of the subsequent agreement for judgment dated July 27, 1994 (A. 82).

The modification judgment of July 25, 1994, and the contempt judgments of July 19 and 21, 1994, are affirmed.

So ordered.

By the Court (Smith, Porada, &
Ireland, JJ.),

Ashley Ahearn,
Asst. Clerk

Entered: April 30, 1996.

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX DIVISION PROBATE & FAMILY COURT
NO. 91DIO93-DI

Yevgenya Kraytsberg
v.
Yury Kraytsberg

MODIFICATION JUDGMENT
(On Complaint filed
January 26, 1994)

This action came on for hearing before the Court, Edward M. Ginsburg, J. presiding, and the issues having been heard and findings having been duly rendered.

It is Ordered and Adjudged that the Judgment of Divorce Nisi dated February 16, 1993 be so modified as follows:

1. All court ordered visitation and contact of the defendant with the minor daughter is suspended.
2. The defendant shall within forty-five (45) days pay to the attorney for the child the four thousand thirty-eight dollars and ten ($4,038.10) cents owed to date for services rendered on behalf of the minor child.
3. The defendant on his own initiative may contact the attorney for the child to set up a procedure to reestablish contact with his daughter. If the defendant makes reasonable provisions for the payment or prepayment for the services to be rendered by the attorney for the child and mental health professional selected by the attorney for the child, the attorney for the child shall initiate a program in which the plaintiff, defendant and minor child shall cooperate. If the defendant refuses to cooperate or act in good faith, the program shall terminate. If the mental health professional determines that the defendant is cooperating in good faith and that the plaintiff is refusing to cooperate in good faith, the mental health professional shall notify the attorney for the child who will bring the matter before the court for appropriate action.

In all other respects the Judgment Nisi dated February 16, 1993 remains in full force and effect.

By the Court.

July 25, 1994

Date

Edward M. Ginsburg

Associate Justice

COMMONWEALTH OF MAASSACHUSETTS

Middlesex ss. PROBATE COURT

No. 91D1091-D1

Yevgenya Kraytsberg, Plaintiff

of Newton, MA

v. Judgment of Contempt

Yury Kraytsberg, Defendant

of Newton, MA

After hearing, it is adjudged that defendant is guilty of contempt of this court for having willfully failed and refused to obey its order of February 23, 1994 in that defendant:

- neglected and refused to pay the fees of the attorney for the child the arrearage of which is fixed at $3,700.00.

It is further ordered that:

- defendant pay $3,700.00 to plaintiff forthwith and $ _____ on on or before and every July 21,1994 thereafter ($3,700.00 of which is to be applied against said arrearage)
- hearing of this contempt be continued to July 21, 1994 at 12:00 noon at Concord
- defendant be committed to the Middlesex County jail at Cambridge for thirty (30) days until he purge himself of said contempt by payment of $3,700.00 and cost of said commitment or until further order of this court or until he otherwise discharged by due course of law and that a mittimus issue accordingly
- this sentence to be suspended until July 21, 1994 at 12:00 noon at Concord

July 19, 1994 Edward M. Ginsburg

Date Judge of Probate

COMMONWEALTH OF MAASSACHUSETTS

Middlesex ss. PROBATE COURT
No. 91D1091-D1

Yevgenya Kraytsberg, Plaintiff
of Newton, MA
v. Judgment of Contempt
Yury Kraytsberg, Defendant
of Newton, MA

After hearing, it is adjudged that defendant is guilty of contempt of this court for having willfully failed and refused to obey its order of February 23, 1994 and July 19, 1994, in that defendant:

- neglected and refused to pay attorney's fees to attorney for child the arrearage of which is fixed at $1,286.00.

It is further ordered that:

- defendant pay $1,286,00 to attorney for child forthwith
- defendant be committed to the Middlesex County jail at Cambridge for thirty (30) days until he purge himself of said contempt by payment of $1,286.00 and cost of said commitment or until further order of this court or until he otherwise discharged by due course of law and that a mittimus issue accordingly

July 21, 1994 Edward M. Ginsburg
Date Judge of Probate

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX DIVISION PROBATE & FAMILY COURT

NO. 91D1093-D1

Yergenya Kraytsberg

V.

MEMORANDUM AND ORDER ON COMPLAINT FOR CONTEMPT (filed March 22, 1994)

Yury Kraytsberg

This matter came on to be heard pursuant to the order of this court dated July 19, 1994. The attorney for the child presented a Motion to Amend the Judgment of Contempt which was designed both to make it absolutely clear the extent of the defendant's obligation and to only hold him presently accountable for the amount of money ordered to be paid on February 23, 1994 and encompassed in the Complaint for Contempt which originally came on to be heard on April 27, 1994, which was filed on March 22, 1994. The matter was continued until the trial on the Complaint for Modification which was heard on July 19, 1994. On the original order of one thousand five hundred and eighty-six ($1,586.00) dollars the defendant has made payment the total amount of three hundred ($300.00) dollars leaving a balance due of one thousand two eighty-six ($1,286.00) dollar.

Since February 1994, the attorney for the child has incurred additional expenses in the amount of four thousand and thirty-eight dollars and ten ($4038.10) cents. The court finds that these expenses have been necessary to protect the interest of the minor child and that the amount of the expenses primarily results from the conduct of the defendant as set forth in the Findings of Fact

in connection with the Complaint for Modification heard July 19, 1994. Although the court has the option of updating the original order which was made the subject of the Complaint for Contempt, in order to be fair to the defendant and with the permission of the attorney for the child, the court will make the four thousand thirty-eight dollars and ten (4,038.10) cent payment due part of the Judgment on the Complaint for Modification and set forth an appropriate payment schedule.

With respect to the one thousand two hundred and eighty-six which was due in February 1994, the court finds no acceptable reason why that payment should not be made forthwith. The order was clear and unequivocal and the defendant has the ability to pay it. He has his own set of priorities including the recent purchase with his present girlfriend of a home in Sharon, Massachusetts. His offer to meet the obligation in this case by paying one hundred ($100.00) dollars per month is an affront to the court.

Wherefore, it is ordered that the defendant be committed to the Middlesex County jail at Cambridge for thirty (30) days or until he has purged himself of said contempt by payment of one thousand two hundred and eighty-six ($1,286.00) dollars and costs of said commitment.

By the Court,

July 21, 1994

Date

Edward M. Ginsburg

Associate Justice

COMMONWEALTH OF MASSACHUSETTS

THE TRIAL COURT
THE PROBATE AND FAMILY COURT
DEPARTMENT

Middlesex Division Docket No. 91D1093-01

JUDGMENT On Complaint for Contempt

Yevgenya Kraytsberg, Plaintiff

v.

Yury Kraytsberg, Defendant

This action came on for (hearing) before the Court, Edward M. Ginsburg, Justice presiding, and the issues having been duly (heard)

It is Ordered and Adjudged: in that the attorney for the child and the defendant have signed an Agreement which is accepted and made a Judgment of the Court, the defendant is discharged in accordance with the terms of the Agreement, when a copy of the signed Agreement is presented at the Middlesex County Jail at Cambridge.

July 27, 1994 Edward M. Ginsburg
Date Justice of the Probate and Family Court

Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department

Middlesex Division Docket No. 91D1O93-D1

Temporary Order On Complaint for Modification
(filed Jan. 26, 1994)

Yevgenya Kraytsberg, Plaintiff
v.
Yury Kraytsberg, Defendant

Pending a hearing on the merits or until further order of the court, it is ordered that:

defendant be given the following visitation rights: All visitation by the defendant terminated pending hearing on the merits.

Attorney's fees for the attorney for the child in the amount of one thousand five hundred and eighty-six ($1,586.00) dollars to be paid forthwith.

Date February 23, 1994

Edward M. Ginsburg
JUSTICE OF THE PROBATE
AND FAMILY COURT

Supreme Judicial Court for the Commonwealth of Massachusetts

1412 Courthouse, Boston, Massachusetts 02108

(617) 557-1020

Yuri Kraytsberg
42 Madison Avenue
Sharon, MA 02067

RE: Docket No. FAR-08568

YEVGENYA KRAYTSBERG
VS.
YURI KRAYTSBERG

NOTICE OF DENIAL OF F.A.R. APPLICATION

Please take note that on July 9, 1996, the above-captioned Application for Further Appellate Review was denied.

Jean M. Kennett, Clerk

Dated: August 7, 1996

To: Ruth R. Budd, Esquire
Yuri Kraytsberg
Joan E. Kolligian, Esquire

STATEMENT OF ISSUES

1. Did the Probate and Family Court err when it terminated the father's access to his child based upon the record and findings of fact issued by the Probate and Family Court?

2. Did the findings of fact issued by Judge Ginsburg on the Complaint for Modification constitute a material change in circumstance which would support or justify a decision to change the judgement for the father's visitation and access to his daughter?

3. On July 9, 1993, should Judge Ginsburg have voluntarily disqualified himself from sitting in any future hearings in actions involving the parties in the above entitled action when on July 9, 1993, with no support from either party for Judge Ginsburg's expressed partial view that the defendant should loose access to his daughter, Judge Ginsburg strongly advocated for an increase in complaints and litigation against the defendant?

4. Did Judge Ginsburg abuse his discretion when he openly advocated for the plaintiff in the trial on the complaint for modification?

5. Did the actions of the court in its conduct of the hearing on civil contempt constitute an abuse of its authority, denying the father his right to a full and fair hearing before an impartial judge?

6. Did Judge Ginsburg deny the defendant his constitutional and lawful right to due process when he incarcerated the defendant for civil contempt on July 21, 1994 by:

- Finding the defendant in civil contempt despite the fact that the record clearly showed that the defendant did not have the ability to comply with the court's order the pay the children's attorney?

- Incarcerating the defendant for civil contempt despite the fact that the record showed that the defendant did not have the ability to purge the civil contempt by complying with the order of the court?

- Failing to advise the defendant that he had a right to counsel in a hearing on contempt where the outcome could have been and was incarceration and a deprivation of his personal liberties?

- Failing to review the order to pay the child's attorney to determine whether or not the judgment was obtained by fraud?

7. Did the Probate and Family Court err when it found the defendant in civil contempt and did not base his finding on current ability to comply?

8. On July 21, 1994 and July 27, 1994 did the Probate and Family Court abused his discretion by modifying a Judgement of Contempt after a Notice of Appeal of that judgement was filed by the defendant on July 20, 1994?

9. Was the court's indefinite termination of the father's access to his child the equivalent of a termination of his parental rights; and if it is, in the instant case, did the court err when it did not find by clear and convincing evidence that the father was unfit?

10. Did the court err when it terminated the father's access to his child in the absence of any evidence that challenged the father's parental fitness?

11. Did the court err when it did not issue findings of fact that questioned the father's fitness as a parent?

12. Did the Probate and Family Court have the authority by statute to appoint an attorney for the minor child who was not a party to the action; and if there is such authority, then did the court abuse its discretion when it appointed such counsel when it recognized that the 5-year old child was not mature enough to provide meaningful direction to counsel; and if there is no such authority, then did the court abuse its discretion in ordering such appointment and furthermore abuse its discretion in ordering the father to pay for this "unauthorized" court appointed attorney?

13. Did Judge Ginsburg deprived the defendant of his constitutional right to due process by:

- Refusing to hear his witness on June 9, 1993?

- Allowing ex-parte motion of Attorney Kollidgian for payment attorneys fees and costs on February 23, 1994?

- Not allowing argument on attorneys fees on February 23, 1994?

- Allowing hearing on ex-parte Motion to Compel Payments of Attorneys Fees filed by Attorney Kollidgian (July 19, 1994) in absence of any itemized statement in support of such motion?

- Accepting on July 21, 1994, two days after hearing on Complaint for Modification, an Affidavit of Attorney for Minor Child in Support of Motion to Compel Payment of Fees and using it later in the Memorandum and Order on Complaint for Contempt and Modification Judgement?

- Refusing to allow hearing on the defendant's Motion for an Evidentiary Hearing on the Attorney's Fees and Performance of the Attorney for the Minor Child on December 7, 1994?

- Using extra-judicial materials to compile Findings of Fact on Complaint for Modification?

- Issuing a third judgement on complaint for contempt on July 27, 1994 without a motion, without a notice and without a hearing?

14. Did Judge Ginsburg abused his discretion by linking directly the father's access to his child with his ability to pay attorneys fees?

15. Did the court erred by delegating judicial responsibility to the attorney for minor child without authority of statute or rule?

16. Did the court err by making findings of fact that are inconsistent with the evidence?

17. Did the Probate and Family Court err when on January 26, 1994 suspended father's unsupervised visitation for the period of 28 days?

18. Did the Probate and Family Court err when on January 26, 1994 and on February 23, 1994 it failed to issue written findings of fact?

Are you now incarcerated?

MR. KRAYTSBERG: Right.

THE COURT: How long have you been there?

MR. KRAYTSBERG: Six days.

MR. MASSING: On a 30-day commitment.

SPEAKER FROM AUDIENCE: May I be heard?

THE COURT: No, you may not. You may sit down.

MR. MASSING: And that can be purged by payment.

THE COURT: If he has the money. There is no such thing as debtor's prison. Not supposed to be. If he doesn't have the money.

You know, I am troubled by it on this record, and what I am going to do is, Mr. Steinfield (indicating Joseph D. Steinfield of the firm of Hill & Barlow in the audience), I am going to draft you.

MR. STEINFIELD: Yes, your Honor.

THE COURT: This has nothing to do with the case that you have coming up before me. I do have very high regard for you. And I think this can be a potentially serious matter. And I want this gentleman properly represented for at least a period of time. And I want to find out if there is a situation where someone is being incarcerated where they have an inability to make a payment. I am troubled by that. I have done no research on it. It is my instincts.

If there is something else that I don't know about, that is another thing. So I want to be advised properly.

And the fact that there may be "only 24 days left" is no answer at all, because it could go 30 days or 60 days under the civil contempt. He can be put in jail until he purges himself.

MR. STEINFIELD: I should tell you, Judge Tauro, I am scheduled to appear before Judge Ginsburg next Wednesday. I don't know if that affects your drafting me or not.

THE COURT: No. You are a soldier, an officer of the Court. I am reaching out to you, and I am telling you that I would appreciate your representing him.

And Judge Ginsburg is somebody I know very well, and he would know that I mean no disrespect in doing it. We all need the guidance.

I understand. I mean, I think he has the toughest job in the world being a Probate Judge, dealing with family problems. I can't imagine a more difficult job for any man or woman. It is certainly a far more difficult job than the one I have. And he deals with tensions that are enormous in every case.

But I am dealing with a discreet constitutional issue, and I want it handled properly. And I regard it as a serious matter.

The Commonwealth of Massachusetts
COMMISSION ON JUDICIAL CONDUCT
14 BEACON STREET - SUITE 102
BOSTON, MASSACHUSETTS 02108
(617) 725-8050
Fax (617) 248-9938

May 10, 1996

Mr. Yuri Kraytsberg
42 Madison Ave.
Sharon, MA 02067

RE: Complaint Number 95-6

Dear Mr. Kraytsberg :

The Commission on Judicial Conduct has completed its consideration of your complaint against Judge Edward M. Ginsburg.

Your complaint was thoroughly investigated by reviewing the court reporter' s tapes and transcripts of the court proceedings at issue, as well as the hundreds of pages of documents you provided, and by interviewing you and many other individuals. Ultimately the Commission determined that the important issues you raised have been or will be reviewed by an appellate court. The Commission's role is not to substitute judgement for an appellate court, as stated in § 2(4) of our statute, M.G.L. c. 211C.

The Commission also voted unanimously to write to Judge Ginsburg expressing our concern, and to write to the Chief Justice for Administration and Management of the Trial Court and the Chief Justice of the Probate and Family Court, seeking rectification of Judge Ginsburg's continuing practice of not officially recording electronically the proceedings in his court.

Please keep in mind that this complaint and its disposition remain, by law, confidential.

Sincerely,
Harry T. Daniels
Chairman

cc: The Honorable Edward M. Ginsburg

Supreme Court, U.S.
FILED
DEC 6 1996
CLERK

(2)

No. 96-1256

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

Yuri Kraytsberg, Pro Se and
Yuri Kraytsberg, as Next Friend of Anna Kraytsberg,
Minor - Petitioners
vs.
Commonwealth of Massachusetts - Respondent

ON PETITION FOR WRIT OF SERTIORARY TO MASSACHUSETTS APEALS COURT

SUPPLEMENTAL APPENDIX
(Appendix B - Findings of Fact)

Yuri Kraytsberg
42 Madison Ave.
Sharon, MA 02067
(617) 784-8353

10 pp

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX DIVISION PROBATE & FAMILY COURT
NO. 91DIO93-DI

Yergenya Kraytsberg
v.
Yury Kraytsberg

FINDINGS OF FACT ON COMPLAINT FOR MODIFICATION (filed January 26, 1994)

A. PROCEDURAL HISTORY:

1. The plaintiff, Yevgenya Kraytsberg, and the defendant, Yury Kraytsberg, were divorced by a Judgment of Divorce Nisi of this Court (Ginsburg, J.) dated February 16, 1993.

2. The plaintiff filed a Complaint for Modification on January 26, 1994 in the Middlesex Probate and Family Court (Docket NO. 9IDIO93-DI). The defendant has not filed an answer.

3. The plaintiff's Complaint for Modification seeks a termination of visitation between the defendant and the minor child, Anna Kraytsberg.

4. The court entered the following temporary orders:

a) On January 26, 1994 an order was entered which provided that pending a hearing on the merits, visitation between the defendant and the minor child was to be supervised under the terms and conditions determined by the attorney for the child. Pursuant to the order a review was scheduled for February 23, 1994.

b) The Recommendations of the Attorney for the Child Regarding Visitation dated January 26, 1994, which were adopted and approved by the court, provided the following:

"1. Pending the further order of the court all visitation shall be supervised by a supervisor to be selected by the attorney for the child.

2. Visitation between Anna and her father shall take place one (1) day per week for a period of up to two (2) hours for each

weekly visitation.

3. The cost, if any, for supervision shall be borne by the defendant.

4. The attorney for the child shall notify both the plaintiff and the defendant by letter, no later than January 31, 1994 of the name of the supervisor and telephone number of the supervisor and the place for visitation. Unless a different schedule is necessary visitation shall occur on: Saturday, February 5, 1994 from 9:00 a.m. to 11:00 a.m.; Saturday, February 12, 1994 from 9:00 a.m. to 11:00 a.m.; Saturday, February 19, 1994 from 9:00 a.m. to 11:00 a.m. If Mr. Kraytsberg is unable to appear for a scheduled visitation he shall contact the supervisor no later than 7:00 p.m. on the evening before. Mrs. Kraytsberg shall be responsible for dropping off and picking up Anna for visitation.

5. During the visitation, the defendant shall be prohibited from discussing with Anna any issues concerning the litigation, the terms of visitation and/or personal issues between himself and the plaintiff.

6. Pending the further order of the court there shall be no telephonic communication between the defendant and Anna."

c) On January 28, 1994 the attorney for the child notified the parties and the attorney for the plaintiff by letter that the supervisor for visitation would be Ms. Nancy Knyff. Visitation was to occur at the McDonald's Restaurant in Norwood, MA. The cost for the supervisor would be twenty-five ($25.00) dollars per hour.

d) On February 18, 1994 by letter Ms. Knyff notified the attorney for the plaintiff and the attorney for the child that none of the scheduled visitations occurred at the request of the defendant.

e) On February 23, 1994 a Temporary Order was entered providing that all visitation by the defendant be terminated pending a hearing on the merits, and that the attorney's fees for the attorney for the child in the amount of one thousand five hundred and eighty-six ($1,586.00) dollars be paid forthwith.

f) On March 21, 1994 the attorney for the child filed a Complaint for Contempt for the failure of defendant to pay the counsel fees. The complaint was returnable before the court for hearing on April 22, 1994, the date originally scheduled for trial on

the merits of the Complaint for Modification. Upon the motion of the attorney for the child, both the Complaint for Modification and the Complaint for Contempt were continued for hearing to July 19, 1994.

g) On June 29, 1994 the defendant's counsel filed a Motion to Withdraw his appearance, which was denied by the court (Ginsburg, J.)

h) On July 19, 1994 the attorney for the child filed a Motion to Compel Payment of Attorney's Fees.

B. BASIC FACTUAL INFORMATION:

5. The plaintiff and the defendant were married at Moscow, Russia on November 26, 1986. There is one (1) child born of the marriage: Anna Kraytsberg, born March 12, 1987, age seven (7).

6. The plaintiff is not remarried. The plaintiff and the minor child, Anna, reside at 16 Warren Terrace, Newton Centre, MA.

7. The defendant is not remarried. The defendant and his significant other, Renata Kuchinsky, reside at 42 Madison Avenue, Sharon, MA. Ms. Kuchinsky's fifteen (15) year old son and her mother reside in the same household.

8. The Judgment of Divorce Nisi of this Court (Ginsburg, J.) dated February 16, 1993 provides in pertinent part for the following:

> "1. The [Mother] shall have the sole legal and physical custody of Anna Kraytsberg, their minor child.
>
> 2. The [Father] shall be entitled to have the minor child with him every other weekend from Friday at 6:00 p.m. until Sunday at 6:00 p.m. If a Monday holiday follows Father's weekend, he shall be entitled to have the minor child with him until Monday at 4:00 p.m. If minor child is enrolled in a class or activity, Father shall take her during the weekends she is with him.
>
> 3. On the weekend that Father does not have the child with him, he shall be entitled to have the child with him from 6:00 p.m. on Thursday until Friday morning when the Father shall deliver the child to residence of the Mother by 10:00 a.m. on Friday.
>
> 4. The Father shall have the minor child with him during the following holiday and vacation times:

(a) Every other Thanksgiving from Thursday morning at 9:00 a.m. until Sunday evening at 6:00 p.m. If the weekend following Thanksgiving is not Father's weekend, he shall return the child to Mother's home Saturday at 9:00 a.m.
(b) The first half of the Christmas vacation. The days of said vacation shall constitute the day after school ends until the day before school begins, inclusive. The Father shall have the child with him from 9:00 a.m. the day after school ends until 4:00 p.m. of the day midday through said holiday.
(c) Every February school vacation week from Saturday at 9:00 a.m. until Sunday at 6:00 p.m.; however, if Father's usual weekend falls at the beginning for the week of vacation, he shall return the child to the Mother on-Saturday at 9:00 a.m. if Father's usual weekend falls at the end of the week of vacation, he shall pick the child up at 6:00 p.m. on Sunday and return her the following Sunday at 6:00 p.m.
(d) Two (2) weeks not consecutive between the end of school and August 1. The same provisions regarding building the week into regular visitation schedule applies as outlined in subparagraph (c) above.
The Father shall notify the Mother of the weeks he chooses on or before April Ist of each year.

5. The Mother shall have the child with her for vacation for the entire month of August and the Father shall have no visitation rights during this period.

6. Neither party shall remove the minor child from the Commonwealth of Massachusetts except by written agreement or order of the court pursuant to Mass. General Laws c. 208, §30.

7. If the child becomes ill during her visit with the Father she shall be returned immediately to the Mother or to her parents.

8. Any and all medical information about the child shall be shared with the other parent in reliable form but without using the child as a messenger. The parent who first has the information shall send a message in some form, with whatever speed the situation requires. Telephone communications should only be issued if there is an emergency. Neither parent shall keep the name of any health provider from the other parent.

9.When the child is with either party, the other party shall be entitled to call on the telephone once between the hours of 9:00

a.m. and 7:00 p.m. Neither party shall call after 7:00 p.m.

10. For any of the child's visits with the Father which exceed three (3) days the Father shall provide to the Mother the exact place where the child shall be, including who will be with them, and the address and telephone numbers where she will be staying.

11. Absent emergency, there shall be no oral, in person communication between the parents. All communication specifically about the child shall be in written form or by telephone only if there is an emergency.

12. The Father shall be solely responsible for the child's transportation from and to the Mother's home for all visitations. The Mother will have the child ready at the scheduled time. Under no circumstances whatsoever shall the Father enter the mother's home for any reason."

9. The minor child, Anna, currently resides with the plaintiff at 16 Warren Terrace, Newton Center, MA.

C. PRESENT AND FUTURE NEEDS OF THE MINOR CHILD:

10. The minor child of the parties, Anna Kraytsberg, was born on March 12, 1987 and is seven (7) years of age.

11. The minor child currently resides with the plaintiff at 16 Warren Terrace, Newton Centre, MA. The minor child has resided continuously with the plaintiff since the parties' separation prior to the Judgment of Divorce Nisi.

12. The minor child attends school at the Bowen School, 280 Cypress Street, Newton Centre, MA. In September, 1994 she will be entering the second grade.

13. The child's general performance in school is excellent. Her classroom teacher portrays Anna as having successfully achieved the academic requirements for grade one. The child, however, exhibited some behavioral problems around the holiday vacation at midyear, described as difficulty with transitions, baby talk and whining. The behaviors described by the teacher ceased in February, but became apparent around Father's Day and then abated.

14. The general health of the child is good. She does not now receive any extraordinary treatment. During the divorce and up through July, 1993 the child was seen by a therapist, Ellen Gordon,

then of Jewish Family and Children's Services. Ms. Gordon recommended cessation of counselling in July, 1993. The child's behavior during this period up through February, 1994 was marked by frequent bed wetting, baby talk, behavioral difficulties. Since February, 1994 the minor child has been described as free from these manifestations. The minor child is not currently treated by any other counsellor or therapist.

15. An attorney for the child was appointed by the Court (Ginsburg, J.) prior to the trial on the merits of the Complaint for Divorce. The child has expressed a meaningful preference on the issue of visitation with the defendant. The child does not wish to be further drawn into the confrontation between her parents, and does not wish to be reminded about restraining orders, police intervention, jail sentences, or other threats by the defendant.

16. The present parenting arrangement has accommodated the child and addressed her best interests by continuing sole legal and physical custody with the plaintiff.

17. Under the terms of the Judgment of Divorce Nisi of this court dated February 16, 1993, Dr. Kenneth D. Herman was to remain as Guardian ad Litem with respect to any issues regarding the minor child. "If he is unable to resolve the issue, he shall notify the attorney for the child who shall bring the matter before the court on appropriate notice to all concerned." There has been no continuing involvement of the Guardian ad Litem in this matter. Dr. Herman ceased to serve as Guardian ad Litem. The attorney for the child filed a Motion to Refer to Guardian ad Litem for Further Investigation on June 9, 1993. The motion was deferred by the court (Ginsburg, J.).

18. The defendant has found it difficult, if not impossible, to cooperate with people in this case who do not agree with him. He alienated Dr. Herman, one of the most experienced and respected Guardian ad Litems to the point where Dr. Herman refused to deal with the defendant any longer. The defendant has had numerous attorneys and his relationship with them has been unusual, to say the least. Sometime he claims to be operating pro se, sometimes he claims to have no lawyer and sometimes he works with them on a parallel track. He would not cooperate with the attorney for the child

who was attempting to establish a mechanism to facilitate a reestablishment of contact with his daughter. He has been jailed twice by the court for contempt for failure to comply with support orders.

D. VISITATION:

19. The defendant has had lapses in visitation since the entry of the Judgment of Divorce Nisi on February 16, 1993. The defendant did not visit with Anna from February through May, 1993. He told the minor child that he was afraid to pick her up because of restraining orders and the possibility of jail. From June, 1993 to December 17, 1993 the defendant exercised his regular visitation. During this period of time the plaintiff observed the child having problems with bed wetting, restlessness, hair pulling, difficulty with concentration, and baby talk.

20. The defendant did not exercise visitation after December 17, 1993, although the terms of the judgment provided that he should be with the child during the first half of the holiday vacation period. After the entry of the temporary order on the Complaint for Modification which provided for supervised visitation, the defendant refused to exercise visitation because he did not like the parameters of the supervision.

21. In January, 1994 the plaintiff learned that the defendant had obtained a refugee travel document for the minor child. The defendant maintains that he applied for and obtained the document in the Spring, 1993 in order to visit friends in Canada. The defendant admits that a refugee travel document is unnecessary to visit Canada. In order to travel to Canada a resident alien must show a green card. The plaintiff has possession of the minor child's green card.

The plaintiff and the defendant have had a long and tortuous history with one another. The Newton Police Department have been involved with the parties during the divorce and since the entry of the Judgment of Divorce Nisi. The plaintiff has consulted with a detective in the domestic violence unit in April and May, 1993 and again in January, 1994. The Newton Police detective confirmed to the plaintiff that the defendant had obtained the refugee travel document for the minor child. The detective told the plaintiff that

there would be no way to stop the defendant from removing the child from the Commonwealth of Massachusetts while he had these documents.

23. The defendant has been vague and confusing in his testimony regarding the purpose of obtaining travel documents for the minor child. The defendant did not consult with the plaintiff in advance of obtaining the document, nor did he notify her that he obtained the documents. Given the history of lack of communication and threats between the parties, it is extremely difficult to rationalize the reason defendant procured the travel document.

24. Although the defendant is rooted in this area in that he has a job and owns a home here, the plaintiff was not unreasonable in her apprehension that the defendant intended to kidnap the child and leave the country. His past behavior and statements coupled with the steps taken by him in obtaining travel documents were consistent with his history of taking unilateral action which is not rational.

E. CHANGE OF CIRCUMSTANCE:

25. Since the entry of the Judgment of Divorce Nisi on February 16, 1994, there has been a material and substantial change in circumstances warranting a change in visitation arrangements to better meet the best interests of the minor child.

26. Although it would be in the child's best interest and meet her expressed preference if an arrangement for visitation could be worked out which would not have as part of the environment the unyielding hostility of the parents toward each other, such an arrangement is not possible at this time.

27. Termination of all visitation, at least for the time being, is in the best interests of the minor child.

F. DISCUSSION:

The relationship between the parents in this case has been poisonous since the inception of the divorce. The defendant is convinced that he has been treated unjustly and that the system is against him. The plaintiff believes that the defendant wants to get his way at any price and would, if provided with an opportunity, abduct the child and leave the country. Both parties' perception is distorted.

Caught between the unyielding hostility of the parents in a position which is intolerable is a six and one-half (6 1/2) year old girl. Despite several efforts, the system, including lawyers, judges, and mental health professionals, has been singularly unsuccessful in attempting to fashion a parenting plan which would afford both parents access to the child without exposing her to constant trauma.

This case is frustrating in that no satisfactory solution is available. The child should have access to both parents and the law should be able to develop a successful parenting plan. However, after a great deal of effort and much deliberation, the court comes to the reluctant conclusion that in the present circumstances there is no way to devise a workable parenting plan which provides access to the defendant. The plaintiff is clearly the primary parent most able to foster the constructive development of the child. Although the defendant sincerely wants to have a meaningful relationship with his daughter, he has been unable to control his impulses. Not only has he caused great anxiety to the plaintiff but even alienated a daughter by a previous marriage who has chosen to live in a foster home rather than remain with her father. In order to provide stability and tranquility for the child and to set the stage for the development of a meaningful relationship with the defendant in the long run the child, plaintiff and defendant need space at this time. The defendant probably recognizes the situation on a subconscious level. He has had no contact with the child since December 1993 and has failed to avail himself of the attempts by the attorney for the child to put into place a mechanism to reestablish a relationship.

It is with reluctance but with a sense of reality that the court is terminating all court ordered visitation between the defendant and child at this time. The court hopes that the plaintiff who has expressed an understanding of the significance of a father-daughter relationship will as time goes on reach out for a mechanism to foster a relationship of the daughter with the defendant.

By the Court,

July 25, 1994

Date

Edward M. Ginsburg,

Associate Justice